

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

CARRIE LAURNETTE ALLEN,  
KIMBERLY LEONARD, TAMIKA  
PAYNE, LARRY BAILEY, AND  
MEAGAN CALDWELL on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

vs.

FLUOR CORPORATION,

Defendant.

**CASE NO: 3:16-cv-01219-D**

[Unlimited Civil Action – Assigned  
to the Honorable Sidney A.  
Fitzwater]]

**FIRST AMENDED COMPLAINT  
FOR DAMAGES FOR:**

**RULE 23 CLASS ACTION**

**(1) VIOLATIONS OF  
AFGHANISTAN LABOR CODE  
ARTICLE 67**

**DEMAND FOR JURY TRIAL**

Plaintiffs Carrie Lournette Allen, Kimberly Leonard, Tamika Payne, Larry Bailey, and Meagan Caldwell, by and through the undersigned counsel, hereby bring this Complaint for Violations of Afghanistan Labor Code Article 67 on behalf of themselves and all others similarly situated against Defendant, and allege the following:

**INTRODUCTION**

1. Plaintiffs' claims in this case are based on the failure of Defendant Fluor Corporation (hereinafter, "Fluor") to pay overtime wages to Plaintiffs and other similarly-situated Tier II FGG Contractors (hereinafter, "Tier II Employees") working in Afghanistan on the Logistics Civil Augmentation Program IV – Task Order 5 (hereinafter, "LOGCAP IV") contract.

2. Fluor has classified Tier II employees as exempt from overtime wages, and pays them at a straight time rate for overtime hours worked, rather than the

1 premium overtime rates required by Afghanistan law. Plaintiffs are required to work  
2 12 hours per day, seven days per week with no overtime premium pay.

3 3. This exempt classification – and the resulting failure to pay Tier II  
4 employees overtime pay for overtime hours worked – is unlawful as Tier II  
5 employees do not satisfy the requirements of any applicable exemption to overtime  
6 laws.

### 7 **JURISDICTION AND VENUE**

8 4. This court has subject matter jurisdiction over this action pursuant to  
9 28 U.S.C. § 1332(d), because at least one member is of diverse citizenship from  
10 Fluor, there are more than 100 class members nationwide, and the aggregate claims  
11 of the Class exceed \$5,000,000 exclusive of costs and interest.

12 5. Venue is proper in this district under 28 U.S.C. Sections 1391 (b) and  
13 (c), as Defendant resides in, and systematically conducts business on a regular basis  
14 in the State of Texas and in District by virtue of the laws of the State of Texas, and is  
15 therefore subject to the court's personal jurisdiction.

### 16 **PARTIES**

17 6. Plaintiff Carrie Lurnette Allen is a resident of the County of Harris,  
18 State of Texas. She worked for Fluor as a Tier II employee beginning within the  
19 Class Period until approximately December 9, 2015.

20 7. Plaintiff Kimberly Leonard is a resident of the County of Fulton, State  
21 of Georgia. She worked for Fluor as a Tier II employee beginning within the Class  
22 Period until approximately February 27, 2016.

23 8. Plaintiff Tamika Payne is a resident of the County of Bell, State of  
24 Texas. She worked for Fluor as a Tier II employee beginning within the Class  
25 Period until approximately February 9, 2016.

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1 this is the fourth in a series of LOGCAP contracts, it is commonly referred to as  
2 LOGCAP IV. The nature of LOGCAP IV is such that the contractors are to serve in  
3 non-combat support roles of the U.S. Army.

4 16. The Bilateral Security Agreement (BSA) and the Agreement on the  
5 Status of NATO Forces and the NATO Personnel Conducting Mutually Agreed  
6 NATO-Led Activities in Afghanistan (SoFA) each set out the rights and obligations  
7 of defense contractors and their local personnel under Afghan law. The BSA and  
8 SoFA unequivocally state that, with limited exceptions, defense contractors and their  
9 personnel are both subject to, and must abide by Afghan law, which includes Afghan  
10 labor law.

11 17. Each Class Member is, or at all times relevant herein was, an employee  
12 working for Defendant in Afghanistan with the job title of “Tier II FGG Contractor.”  
13 Tier II employees are non-managerial employees responsible for providing base-  
14 camp construction, housing, transportation, fuel, meals, and laundry to U.S. troops.

15 18. Each Tier II employee has been classified by Fluor as “exempt” with an  
16 annual “salary” of \$45,000 per year. Despite each Class Member’s classification as  
17 “exempt,” their weekly compensation is paid at an *hourly rate* and they perform  
18 duties typically performed by “hourly” non-exempt employees.

19 19. Plaintiffs work, and at all times relevant herein worked, in excess of 40  
20 hours per week throughout the entirety of their employment with Fluor in  
21 Afghanistan. In fact, Fluor has mandated that all Tier II employees work a total of  
22 84 hours per week, and a review of pay stubs reveals that these employees were  
23 consistently working over 300 hours in a four week period. Plaintiffs are required to  
24 report the number of hours worked each day, and their pay is subject to a reduction  
25 if they work less than the required 84 hours per week.

26 20. Plaintiffs are paid straight time for all 84 hours worked, instead of  
27 receiving time and a quarter of their hourly rate for hours worked over 8 hours per  
28 day Monday through Friday, and time and a half of their hourly rate for hours

1 worked over 8 hours per day on Saturday and Sunday, as required by Article 67 of  
2 the Afghanistan Labor Code.

3 21. None of the job duties of Tier II employees relate to management or  
4 exercise of discretion and independent judgment with respect to matters of  
5 significance. Nor do their job duties focus on managing the enterprise in which they  
6 are employed, directing the work of one or more other employees, or hiring and  
7 firing other employees. Plaintiffs are not learned professionals performing work  
8 requiring advanced knowledge in a field of science or learning. Nor are they creative  
9 professionals performing work requiring invention, imagination, originality or talent  
10 in a recognized field of artistic or creative endeavor.

11 22. In sum, Class Members are hourly employees, required to work 84  
12 hours per week, with no overtime compensation.

13 23. As a direct, foreseeable, and proximate result of Defendant's conduct,  
14 Plaintiffs and similarly situated Class Members are owed overtime compensation,  
15 plus interest and/or other damages, the precise amount of which will be proven at  
16 trial.

17 **RULE 23 CLASS ACTION ALLEGATIONS**

18 24. Plaintiffs bring all claims alleged herein under Afghanistan law as a  
19 nationwide class action on behalf of all United States citizens who worked for  
20 Defendant in Afghanistan as a Tier II employee during the time period covered  
21 herein. Plaintiffs seek to certify a class pursuant to the Federal Rules of Civil  
22 Procedure, Rule 23 comprised of:

23 All United States citizens who are working or have worked as  
24 Tier II employees for Defendant in Afghanistan under the  
25 LOGCAP IV – Task Order 5 contract, and who were paid  
26 straight time rates for overtime work hours and not paid on a  
27 salary basis in any week during the period commencing June 1,  
28 2008 through the entry of final judgment in this action.

1        25. The class claims herein have been brought and may properly be  
 2 maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure  
 3 because (1) the class is so numerous that joinder of all class members is  
 4 impracticable; (2) there are questions of law and or fact common to the class; (3) the  
 5 claims of the proposed class representative are typical of the claims of the class; and  
 6 (4) the proposed class representatives will fairly and adequately protect the interests  
 7 of the class. In addition, the questions of law or fact that are common to the class  
 8 predominate over any questions affecting only individual class members and a class  
 9 action is superior to other available means for fairly and efficiently adjudicating the  
 10 controversy.

11        26. **Ascertainability and Numerosity:** The potential class members as  
 12 defined herein are so numerous that joinder would be impracticable. Plaintiffs are  
 13 informed and believe, and thereon allege that Defendant has employed hundreds, if  
 14 not thousands, of Tier II employees in Afghanistan during the class period. The  
 15 names and addresses of the class members are available to the Defendant, as are  
 16 detailed records of each class member's hours worked during the class period.  
 17 Notice can be provided to the class members via first class mail using techniques  
 18 and a form of notice similar to those customarily used in class action lawsuits of this  
 19 nature.

20        27. **Commonality and Predominance of Common Questions:** There are  
 21 questions of law and fact common to Plaintiffs and the class members that  
 22 predominate over any questions affecting only individual members of the class.  
 23 These common questions of law and fact include, without limitation:

24            a. Whether Defendant has employed class members in a position  
 25 subject to, and not exempt from, Afghanistan's overtime pay requirements;

26            b. Whether Defendant has failed to pay class members on a salary  
 27 basis;

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1 c. Whether Defendant has failed to pay class members overtime  
2 wages for time worked in excess of 40 hours per week and/or eight hours per day;

3 d. Whether Defendant violated Afghanistan Labor Code Article 30,  
4 which limits the ordinary working period to no more than 40 hours per week.

5 e. Whether Defendant violated Afghanistan Labor Code Article 38,  
6 which provides that any work done outside the ordinary hours of work shall be  
7 considered overtime, and employers are required to pay employees a premium.

8 f. Whether Defendant violated Afghanistan Labor Code Article 67,  
9 which requires that an hourly wage for overtime be paid 25% more than the official  
10 working hour rate on ordinary days and 50% more than the hourly rate on off days  
11 (weekends or holidays).

12 g. The proper formula for calculating restitution, damages, and  
13 other statutory penalties owed to Plaintiffs and the class members alleged herein.

14 28. **Typicality**: Plaintiffs' claims are typical of the claims of the other class  
15 members. Defendant's common course of unlawful conduct has caused Plaintiffs  
16 and similarly situated class members to sustain the same or similar injuries and  
17 damages caused by the same practices of Defendant. Plaintiffs' claims are thereby  
18 representative of and co-extensive with the claims of the other class members.

19 29. **Adequacy of Representation**: Plaintiffs are members of the Rule 23  
20 class defined herein, do not have any conflicts of interest with the other class  
21 members, and will prosecute the case vigorously on behalf of the class members.  
22 Plaintiffs' counsel are competent and experienced in litigating large class actions.

23 **FIRST CAUSE OF ACTION**

24 **Violations of Afghanistan Labor Code Article 67**

25 **(Against All Defendants)**

26 30. Plaintiffs incorporate by reference each and every paragraph of this  
27 Complaint as though set forth in full in this cause of action and further alleges:

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1           31. Afghanistan Labor Code Article 6 provides that “Foreign Citizens who  
2 are working in government or non-government organizations or in private sector or  
3 joint ventures in Afghanistan based on the separate contracts that have been signed  
4 previously or are working in the country based on the license they have obtained or  
5 may obtain from the Islamic Republic of Afghanistan have to obey this code.”

6           32. Article 30 sets forth the permissible hours of work for employees  
7 working in Afghanistan. Pursuant to Article 30(2), “[t]he ordinary working period,  
8 on average, during the course of the year, cannot be more than 40 hours per week.”

9           33. Article 38 provides that “[w]ork done outside the ordinary hours of  
10 work is considered to be overtime.”

11           34. Article 67 requires that a premium be paid on all overtime hours.  
12 Specifically, pursuant to Article 67 “[a]n hourly wage for overtime is paid 25% more  
13 than the official working hour rate on ordinary days and 50% more than the hourly  
14 rate on off days (weekend or holidays).”

15           35. Plaintiffs and similarly situated class members work a total of 84 hours  
16 per week, 44 hours of which are considered overtime as defined by Articles 30 and  
17 38.

18           36. Defendant pays Plaintiffs and similarly situated class members straight  
19 time for all 84 hours worked each week.

20           37. By failing to pay overtime compensation to Plaintiffs and similarly  
21 situated class members as alleged above, Defendant has violated and continues to  
22 violate Afghanistan Labor Code Article 67, which requires the payment of overtime  
23 compensation for employees working in excess of 40 hours per week.

24           38. As a direct and proximate result of Defendant’s unlawful conduct,  
25 Plaintiffs and similarly situated class members have been deprived of overtime  
26 compensation in an amount to be determined at trial, and are entitled to recovery of  
27 such amounts, plus interest thereon, and attorneys’ fees and costs.

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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and the above-described Rule 23 class of similarly situated class members, demand judgment against Defendant and pray for relief as follows:

1. Certification of the above-described Rule 23 Class as a class action, pursuant to Federal Rule of Civil Procedure, Rule 23;
2. Provision of class notice to all Class Members;
3. A declaratory judgment that Defendant has knowingly and intentionally violated Afghanistan Labor Code Article 67 by failure to pay overtime compensation to Class Members;
4. An equitable accounting to identify, locate, and restore to all current and former Class Members the overtime wages due;
5. An award to Plaintiffs and the Class Members of damages in the amount of unpaid overtime compensation, including interest thereon, subject to proof at trial;
6. An award to Plaintiffs and the Class Members of reasonable attorneys' fees and costs; and
7. An award to Plaintiffs and the Class Members of such other and further relief as the Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

Plaintiffs demand an individual trial by jury on all issues so triable.

DATED: May 16, 2016

**ENGSTROM, LIPSCOMB & LACK P.C.**

By: /S/ Richard P. Kinnan  
Richard P. Kinnan, Esq.  
State Bar of California No. 123170  
Eric R. Bell, Esq.  
State Bar of California No. 299045  
10100 Santa Monica Boulevard, 12<sup>th</sup>  
Floor  
Los Angeles, CA 90067-4113  
Tel: (310) 552-3800 / Fax:  
(310) 552-9434  
[rkinnan@elllaw.com](mailto:rkinnan@elllaw.com)  
[ebell@elllaw.com](mailto:ebell@elllaw.com)  
Attorneys for Plaintiffs

**U. LAWRENCE BOZE & ASSOCIATES P.C.**

By: /S/ U. LawrenceBoze  
U. Lawrence Boze, Esq.  
State Bar of Texas No. 02801600  
2212 Blodgett  
Houston, TX 77004  
Tel: (713) 520-0260  
Fax: (713) 520-6194  
[Bozelaw@aol.com](mailto:Bozelaw@aol.com)  
Attorneys for Plaintiffs

**WEST & ASSOCIATES, L.L.P.**

By: /S/ Veretta Frazier  
Royce B. West, Esq.  
State Bar of Texas No. 21206800  
Veretta Frazier, Esq.  
State Bar of Texas No. 00793264  
320 South RL Thorton Freeway  
Dallas, TX 75203  
Tel: (214) 941-1881  
Fax: (214) 941-1339  
[Royce.w@westllp.com](mailto:Royce.w@westllp.com)  
Attorneys for Plaintiffs